

ORIGINAL FILED  
July 15 2008

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

**HAMILTON CITY COURT  
223 SOUTH SECOND STREET  
HAMILTON, MT 59840  
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11 July 2008

Montana Supreme Court  
Commission on the Code of Judicial Conduct  
Box 203003  
Helena, MT 59620-3001

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Re: Proposed Change, 2008 Montana Code of Judicial Conduct

Honorable Justices

I beg leave to comment on proposed rule 3.10 which, if adopted, would preclude city judges and justices of the peace from practicing law while in office.

Sound reasons of public policy have given rise to a rule which prohibits district judges and Supreme Court justices from practicing law while in office. But, it does not necessarily follow that the same ought to be the case with full-time magistrates.

First of all the magistrates are not as visible in their respective, relatively small, jurisdictions as district judges and Supreme Court justices are in their larger spheres of influence. So, it is less likely that a magistrate, who practices law in way that expresses the spirit of the present ethical norm, will become the subject of a wide-ranging public debate or thoughtful scrutiny. Consequently, perpetuating the current rule will not operate to the detriment of the legal profession or the courts' reputation.


Second, magistrates are not as powerful as district judges or Supreme Court justices. So, it is less likely that a magistrate might be perceived as using his association, such as it is, with district judges and Supreme Court justices to attract clients or to add luster to his professional reputation.

Third, there are vast differences in pay between magistrates on the one hand and district judges or Supreme Court justices on the other hand. Prohibiting lawyer-magistrates from practicing law seems rather more arbitrarily cruel than reasonably necessary. Moreover, the prohibitions could drive all but a rare few of the lawyer-magistrates from public service simply for economic reasons without perceptibly raising the sum total of ethical behavior in Montana. This would leave Montana and Montana's courts of limited jurisdiction much the worse for the loss of their education, experience and dedication.

While on the topic of things economic, I recently read of a proposed increase in the dues to remain licensed to practice law in Montana. This will not be an easy thing for some practitioners I know. A few pages on in the same publication I read of \$900 C.L.E. in Cozumel with free drinks and a \$3000 C.L.E. in Palau. One might well wonder if the leading earners and, or, moral leaders of our profession are sufficiently in touch with the financial circumstances of the humbler practitioners.

In conclusion, I am not aware of any great scandal or any series of small scandals involving unethical behavior and lawyer magistrates. So, one may suppose there has been no public uproar about any such state of affairs. We have, in my opinion, a good system of lower courts here and, by and large, a group of magistrates, lawyers and non-lawyers alike, of which any state might be proud. I should hesitate to see it wrecked merely for the sake of some "ivory tower" pursuit of ethical purity far removed from any presently existing ethical necessity.

Very Truly Yours,

  
Michael J. Reardon  
Hamilton City Judge  
Bar No. 3775